

SUMMARY ANALYSIS OF AMENDED BILL

Author: Eng Analyst: William Koch Bill Number: AB 1957
 Related Bills: See Prior Analysis Telephone: 845-4372 Amended Date: March 25, 2008
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Revise Income Tax Forms And Instructions To Allow A Person To Report & Pay Qualified Use Tax/Operative For Returns Filed For Taxable Years On And After January 1, 2009

____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

____ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended _____.

____ FURTHER AMENDMENTS NECESSARY.

____ DEPARTMENT POSITION CHANGED TO _____.

____ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED
X February 13, 2008, STILL APPLIES.

____ OTHER – See comments below.

SUMMARY

This bill would require taxpayers that fail to report and remit a use tax obligation directly to the State Board of Equalization (BOE) to report and remit the use tax obligation with the state income tax return, which is currently an option.

This analysis addresses only the provisions of the bill that impact the Franchise Tax Board (FTB).

SUMMARY OF AMENDMENTS

The March 25, 2008, amendments would give taxpayers required to report and remit a use tax obligation with their state income tax return the option either of paying the actual amount of use tax due or, for individual purchases of less than \$1,000, of estimating the use tax due. The estimate would be based on the taxpayers' California taxable income as reflected in the use tax table shown in the accompanying instructions of the California income tax return.

Except for the This Bill, Implementation Considerations, Technical Considerations, and Fiscal Impact sections, the remainder of the department's analysis of this bill as introduced February 13, 2008, still applies.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	<u>X</u> PENDING

Legislative Director

Date

Brian Putler

4/9/08

THIS BILL

In the case where an individual, estate, trust, or business entity fails to report and pay use tax directly to BOE, this bill would eliminate the current election to report and pay use tax on the state income tax return and would instead make it a requirement.

In addition, this bill would require FTB to include a use tax table with the department's income tax forms instructions. The use tax table would indicate an estimate of the use tax due, based on the California taxable income of taxpayers who owe use tax for individual purchases of less than \$1,000.

Under this bill, administrative functions regarding use tax would remain divided between FTB and BOE. FTB would process and collect use tax voluntarily reported on and paid with income tax returns, while BOE would retain responsibilities for auditing, collecting, and processing claims for refund of use tax.

IMPLEMENTATION CONSIDERATIONS

This bill does not specify the methodology to prepare the use tax table FTB would be required to include in the tax forms instructions. Department staff anticipates the BOE would provide the use tax table for inclusion in the income tax forms instructions, however, this bill does not indicate the BOE would be required to do so.

Since this bill is silent regarding the methodology to create the use tax table, this bill may require either FTB and/or BOE to be subject to the Administrative Procedures Act (APA) in creating the use tax table. Furthermore, since the bill lacks any statutory guidance about specifically how taxable income is to be used in creating the use tax table and the bill does not provide either FTB or BOE with a statutory delegation of rulemaking authority to make this determination, it is unclear whether either FTB or BOE would be able to adopt an enforceable interpretative regulation creating the use tax table.

The author may wish to amend this bill to include language to specify the correlation between California taxable income and the estimate of use tax due, and also provide either FTB or BOE with a specific delegation of rulemaking authority to create the use tax table.

Department staff anticipates the use tax table would increase the size of the Form 540/540A, 540 2EZ, and the 540NR booklets beyond the printing capacity of the Office of State Publishing (OSP), the state department that prints FTB's tax booklets. Different bindings may be required to accommodate the additional pages. If the OSP is unable to print the income tax booklets, FTB would need to contract with a vendor to print the booklets. The costs and time associated with this are unknown, but are likely to increase printing costs and may subject the printing of forms to delays.

TECHNICAL CONSIDERATIONS

Amendment 1 has been provided to correct an unresolved technical error that was identified in the department's analysis of this bill as introduced February 13, 2008. This amendment reflects the new page and line number of the error.

FISCAL IMPACT

This bill would require a use tax table in all tax form booklets. As a result, this bill would impact the department's printing costs for tax returns. The additional costs will be identified and an appropriation requested, if necessary, as the bill moves through the legislative process.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENT TO AB 1957
As Amended March 25, 2008

AMENDMENT 1

On page 7, strike line 2 and insert:
years beginning on or after January 1, 2009.